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Mark A. Charles 51,547
Name of Attorney/Agent Registration No.
Signature of Attorney/Agent

Case 6805C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: :
Yeazell, *et al.* : **BEFORE THE BOARD OF APPEALS**
Serial No.: 09/811,875 : Group Art Unit: 3749
Filed: March 19, 2001 : Examiner: Jiping LU
Confirmation No.: 1033 :

For: **BAGLESS DRY CLEANING KITS AND
PROCESSES FOR DRY CLEANING**

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants appealed to the Board of Appeals by filing a Notice of Appeal, dated February 26, 2004 from the final rejection of Claims 1-25, as contained in the final Office Action dated August 26, 2003 (Paper No. 10) of the Primary Examiner. The Commissioner is hereby authorized to charge any necessary fees to Deposit Account No. 16-2480. This Appeal Brief is being submitted in triplicate.

(1) REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company, a corporation of The State of Ohio, having a place of business at Cincinnati, Ohio 45202.

(2) RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

(3) STATUS OF CLAIMS

Claims 11-25 are pending and have been appealed. A copy of the appealed Claims 11-25 is attached as APPENDIX I.

(4) STATUS OF AMENDMENTS

All amendments have been entered.

(5) **SUMMARY OF INVENTION**

The present invention relates to bagless dry cleaning kits comprising one or more carrier sheets and a liquid cleaning/refreshment composition. Optionally, the kits comprise a stain removal composition and an Absorbent Stain Receiving Article. The present invention further comprises processes for dry cleaning fabric articles and the like with out the need for a containment bag.

(6) **ISSUE**

Are Claims 11-25 unobvious and patentable over U. S. Patent Nos. 5,238,587, and 5,876,462, under 35 U.S.C. § 103(a)?

A copy of the reference is attached as APPENDIX II.

(7) **GROUPING OF CLAIMS**

Claims 11-25 stand or fall together.

(8) **ARGUMENT**

Claims 11-25 are unobvious and patentable over 5,238,587, and 5,876,462, under 35 U.S.C. § 103(a)

Claims 11-19, 21, and 23-24 were rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 5,238,587 to Smith *et al.* ("Smith"). Applicant respectfully traverses the rejection.

Claims 11-19, and 23-24 were rejected under 35 U.S.C. §103 as being allegedly unpatentable over U.S. Patent No. 5,876,462 to Weller *et al.* ("Weller"). Applicant respectfully traverses the rejection.

On pages 2-3 of the Office Action under the rejections to Smith and Waller, it alleges that it would have been obvious to one having ordinary skill in the art at the time the invention was made to eliminate the bag and its function in order to save costs, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. Applicant respectfully submits under Glade v. Walgreen Co., 50 U.S.P.Q. 407, 122 F.2d 306, that the elimination of an element, even where the same general result is achieved, would not preclude receiving a patent for a combination. The court said, at 122 F.2d page 309:

We find nothing in the statute, or in the decisions cited, which would preclude plaintiff from receiving a patent for a combination, even though it produced the same result as other such devices, if it produced that result with fewer elements that had theretofore been used or thought necessary. This is precisely what

plaintiff did. Theretofore others had produced the same general result with five or more elements, whereas plaintiff produced the same general result more efficiently with three elements. It is not fair to say that Martin uses the same old elements as those before him, for there are at least two of the old elements used in prior devices which Martin does not use at all. In other words, he produces the same result in a more efficient and facile manner by making three of those old elements accomplish the same general result as five or more had theretofore done. (Emphasis added)

In the present invention, Applicant respectfully submits that the present invention retains the dry cleaning/refreshment function even though an element (i.e., the bag) is eliminated from the kit and/or the system and/or the method. Moreover, the present invention provides the additional benefits of not adding new wrinkles and/or removing existing wrinkles from the fabrics being treated. Thus, the present invention is non-obvious over Smith and Waller.

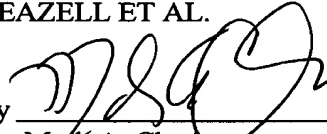
The Office Action argues that it would be obvious to one having ordinary skill in the art at the time the invention was made to eliminate the bag and its function in order to save costs, since it has been held that omission of an element and its function in a combination where the remaining element perform the same function as before involves only routine skill in the art. Applicants respectfully submit that by eliminating the bag, increased control of moisture and minimization of wrinkling can be obtained. *See, e.g.*, Specification, page 4, lines 1-35. Thus, the elimination of the bag surprisingly provides a minimization of wrinkling. Further, the function of containing the cleaning/refreshment compositions is still performed, at least in part, by the heating vessel. Thus, Applicants respectfully submit that the removal of the bag encompasses more than simply removing an element. There is absolutely no disclosure or suggestion of such functions by Smith or Weller.

Based on the above arguments, the Office Action has failed to establish a prima facie case of obviousness. Therefore, Appellants respectfully submit that the presently claimed invention is unobvious and patentable over Weller and Smith under 35 U.S.C. §103(a). Appellants respectfully request reversal of this rejection of the base claims and any dependent claims.

In view of the foregoing remarks, it is respectfully submitted that all claims are allowable. Accordingly, Appellants respectfully request reversal of all rejections.

Respectfully submitted,

YEAZELL ET AL.

By 

Mark A. Charles
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Registration No. 51,547
(513) 627-8150

April 26, 2003
Cincinnati, Ohio

APPENDIX I

Appealed Claims – Case 6805C

11. A bagless kit for dry cleaning fabrics comprising one or more carrier sheets that releasably comprise an amount of a liquid cleaning/refreshment composition such that when fabrics are exposed to said liquid cleaning/refreshment composition within a heating vessel, in the absence of a bag, the fabrics are cleaned.

12. The kit according to Claim 11 wherein said fabric are exposed to said liquid cleaning/refreshment composition in a heating vessel.

13. A method for cleaning fabrics in need of cleaning comprising:

- a) placing the fabrics in a heating vessel;
- b) placing a carrier sheet that releasably comprises an amount of a liquid cleaning/refreshment composition, such that when the fabrics are exposed to said liquid cleaning/refreshment composition the fabrics are cleaned, into the heating vessel; and
- c) operating the heating vessel, in the absence of a bag, such that the carrier sheet releases the liquid cleaning/refreshment composition in the form of a liquid vapor within the heating vessel.

14. A system for dry cleaning fabrics comprising contacting fabrics in need of cleaning with a liquid cleaning/refreshment composition such that the fabrics are cleaned, wherein the fabrics and liquid cleaning/refreshment composition are contained within a mechanical heating vessel.

15. A method for cleaning fabrics in need of cleaning comprising:

- a) placing the fabrics in a heating vessel;
- b) introducing an amount of a liquid cleaning/refreshment composition into the heating vessel such that the fabrics are cleaned; and
- c) operating the heating vessel, in the absence of a bag, such that the liquid cleaning/refreshment composition cleans the fabrics.

16. A system for dry cleaning fabrics comprising an amount of a liquid cleaning/refreshment composition contained within a heating vessel, wherein fabrics present in the heating vessel are cleaned upon operating said heating vessel, in the absence of a bag.

17. A method for dry cleaning fabrics in a heating vessel without adding wrinkles to the fabric articles comprising:

- a) placing the fabrics in a heating vessel;
- b) placing a carrier sheet that releasably comprises an amount of a liquid cleaning/refreshment composition, such that when the fabrics are exposed to said liquid cleaning/refreshment composition the fabrics are cleaned, into the heating vessel; and
- c) operating the heating vessel, in the absence of a bag, such that the carrier sheet releases the liquid cleaning/refreshment composition in the form of a liquid vapor within the heating vessel.

18. A method for cleaning fabrics in need of cleaning comprising:

- a) placing the fabrics in a heating vessel;
- b) exposing said fabrics within the heating vessel, in the absence of a bag, to an amount of liquid cleaning/refreshment composition for an amount of time such that the fabrics are cleaned.

19. A kit according to Claim 11 further comprising one or more Absorbent Stain Receiver Articles.

20. A kit according to Claim 19 wherein said one or more Absorbent Stain Receiver Articles is selected from the group consisting of TBAL, LBAL, MBAL, FAM and mixtures thereof.

21. A kit according to Claim 11 further comprising a pre-treating composition.

22. A kit according to Claim 21 wherein the pre-treating composition comprises butoxy propoxy propanol.

23. A kit according to Claim 11 wherein the one or more carrier sheets are supplied in a pouch which is substantially water tight and the carrier sheets are pre-saturated with the liquid cleaning/refreshment composition.

24. A kit according to Claim 11, wherein the liquid cleaning/refreshment composition comprises from about 90% to about 99.5% by weight water and from about 10% to about 0.5%

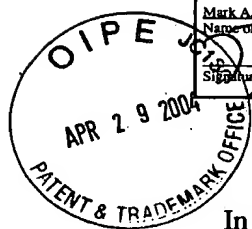
by weight of materials selected from the group consisting of perfumes, emulsifiers, surfactants, solvents, preservatives and mixtures thereof.

25. A kit according to Claim 11 wherein the one or more carrier sheets have an aggregate surface area of from about 250 in² (1613 cm²) to about 1,000 in² (6452 cm²).

APPENDIX II

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on April 26, 2004

Mark A. Charles
Name of Attorney
51,547
Registration No.
Signature of Attorney



P&G Case 6805C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of

Burce Albert Yeazell et al.

Serial No. 09/811,875

Filed March 19, 2001

:
: Confirmation No. 1-33
: Group Art Unit 3749
: Examiner Jiping Lu

For Bagless Dry Cleaning Kits and Processes For Dry Cleaning

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Enclosed, pursuant to 37 C.F.R. 1.192(a), is Appellant's brief on Appeal for the above application. The Brief is being forwarded in triplicate.

The fee for this Brief on Appeal is \$330.00 37 CFR 1.17(c).

The Director is hereby authorized to charge the above fee, or any additional fees that may be required, or credit any overpayment to Deposit Account No. 16-2480 in the name of The Procter & Gamble Company. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By

Mark A. Charles
Attorney or Agent for Applicant(s)
Registration No. 51,547
(513) 627-4229

Date: April 26, 2004

Customer No. 27752

(BriefonAppealTrans.doc)
(Last Revised 3/30/2004)

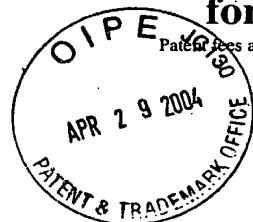
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AF/3749
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FEE TRANSMITTAL

for FY 2004

Patent fees are subject to annual revision.



Complete if Known

Application Number	09/811,875
Confirmation Number	1033
Filing Date	March 19, 2001
First Named Inventor	Bruce Albert Yeazell et al.
Examiner Name	Jiping Lu
Art Unit	3749
Attorney Docket No.	6805C

TOTAL AMOUNT OF PAYMENT (\$330.00)

METHOD OF PAYMENT

1. ☒ The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to:

Deposit Account Number: 16-2480

Deposit Account Name: The Procter & Gamble Company

FEE CALCULATION

1. BASIC FILING FEE - Large Entity

Code (\$)	Fee Description	Fee Paid
1001 770	Utility filing fee	<input type="checkbox"/>
1002 340	Design filing fee	<input type="checkbox"/>
1004 770	Reissue filing fee	<input type="checkbox"/>
1005 160	Provisional filing fee	<input type="checkbox"/>

SUBTOTAL (1) (\$)☐

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE - Large Entity

		Extra Claims	Fee from Below	Fee Paid
Total Claims	<input type="checkbox"/> - 20** =	<input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/>
Independent Claims	<input type="checkbox"/> - 3** =	<input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/>
Multiple Dependent		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

** or number previously paid, if greater; For Reissues, see below

Code (\$)	Fee Description
1202 18	Claims in excess of 20
1201 86	Independent claims in excess of 3
1203 290	Multiple dependent claim, if not paid
1204 86	**Reissue independent claims over original patent
1205 18	**Reissue claims in excess of 20 & over original patent

SUBTOTAL (2) (\$)☐

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Code (\$)	Fee Description	Fee Paid
1051 130	Surcharge-late filing fee or oath	<input type="checkbox"/>
1052 50	Surcharge-late provisional filing fee or cover sheet	<input type="checkbox"/>
1053 130	Non-English specification	<input type="checkbox"/>
1812 2,520	For filing a request for <i>ex parte</i> reexamination	<input type="checkbox"/>
1804 920*	Requesting publication of SIR prior to Examiner's action	<input type="checkbox"/>
1805 1,840*	Requesting publication of SIR after Examiner's action	<input type="checkbox"/>
1251 110	Extension for reply within 1 st month	<input type="checkbox"/>
1252 420	Extension for reply within 2 nd month	<input type="checkbox"/>
1253 950	Extension for reply within 3 rd month	<input type="checkbox"/>
1254 1,480	Extension for reply within 4 th month	<input type="checkbox"/>
1255 2,010	Extension for reply within 5 th month	<input type="checkbox"/>
1401 330	Notice of Appeal	<input type="checkbox"/>
1402 330	Filing a brief in support of an appeal	[330]
1403 290	Request for oral hearing	<input type="checkbox"/>
1451 1,510	Petition to institute a public use proceeding	<input type="checkbox"/>
1452 110	Petition to revive - unavoidable	<input type="checkbox"/>
1453 1,330	Petition to revive - unintentional	<input type="checkbox"/>
1501 1,330	Utility issue fee (or reissue)	<input type="checkbox"/>
1502 480	Design issue fee	<input type="checkbox"/>
1460 130	Petitions to the Commissioner	<input type="checkbox"/>
1807 50	Processing fee under 37 C.F.R. 1.17(q)	<input type="checkbox"/>
1806 180	Submission of Information Disclosure Statement	<input type="checkbox"/>
1809 770	Filing a submission after final rejection (37 CFR § 1.129(a))	<input type="checkbox"/>
1810 770	For each additional invention to be examined (37 CFR § 1.129(b))	<input type="checkbox"/>
1801 770	Request for Continued Examination (RCE)	<input type="checkbox"/>
1802 900	Request for expedited examination of a design application	<input type="checkbox"/>
1454 1330	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	<input type="checkbox"/>
	Other fee (specify) _____	<input type="checkbox"/>
	Other fee (specify) _____	<input type="checkbox"/>

* Reduced by Basic Filing Fee Paid SUBTOTAL (3) (\$ [330.00])

SUBMITTED BY

Name (Print/Type)	Mark A. Charles	Registration No.	51,547	Telephone	(513) 627-4229
Signature		(Attorney/Agent)		Date	April 26, 2004

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 422 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.